

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jackie Manginelli	Team: Squad #10	CCRB Case #: 202001754	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 02/23/2020 3:50 PM, Sunday, 02/23/2020 4:15 PM	Location of Incident: East 159th Street and Courtlandt Avenue and the PSA 7 stationhouse.	Precinct: 44	18 Mo. SOL 8/23/2021	EO SOL 4/9/2022	
Date/Time CV Reported Mon, 03/02/2020 4:47 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/02/2020 4:47 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mike Suarez	05841	955540	PSA 7
2. POM John Migliaccio	25698	964169	PSA 7
3. POM Nicholas Rios	06583	955377	PSA 7
4. SGT Steven Counihan	4669	952620	PSA 7
5. POM Matthew Miret	07813	961955	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.POM John Migliaccio	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer John Migliaccio frisked § 87(2)(b)	
B.POM Matthew Miret	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret frisked § 87(2)(b)	
C.POM Matthew Miret	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret searched § 87(2)(b)	
D.POM Mike Suarez	Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b)	
E.POM Matthew Miret	Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret used physical force against § 87(2)(b)	
F.POM Mike Suarez	Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b)	
G.POM Mike Suarez	Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
H.POM John Migliaccio	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer John Migliaccio searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
I.SGT Steven Counihan	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Sergeant Steven Counihan searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
J.POM Matthew Miret	Abuse: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
K.POM John Migliaccio	Discourtesy: In the vicinity of East 159th Street and Courtlandt Avenue and the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio spoke discourteously to § 87(2)(b)	
L.POM John Migliaccio	Discourtesy: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio spoke discourteously to § 87(2)(b)	
M.POM Mike Suarez	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez strip-searched § 87(2)(b)	
N.POM Matthew Miret	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret strip-searched § 87(2)(b)	
O.POM Mike Suarez	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez refused to provide his name to § 87(2)(b)	
P.POM John Migliaccio	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio refused to provide his name to § 87(2)(b)	
Q.POM Nicholas Rios	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Nicholas Rios refused to provide his name to § 87(2)(b)	
R.SGT Steven Counihan	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Sergeant Steven Counihan refused to provide his name to § 87(2)(b)	
S.POM Matthew Miret	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret refused to provide his name to § 87(2)(b)	
T.POM Mike Suarez	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez failed to provide § 87(2)(b) with a business card.	
U.POM John Migliaccio	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio failed to provide § 87(2)(b) with a business card.	
V.POM Nicholas Rios	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Nicholas Rios failed to provide § 87(2)(b) with a business card.	
W.SGT Steven Counihan	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Sergeant Steven Counihan failed to provide § 87(2)(b) with a business card.	

Officer(s)	Allegation	Investigator Recommendation
X.POM Matthew Miret	Abuse: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret failed to provide § 87(2)(b) with a business card.	

Case Summary

On March 2, 2020, § 87(2)(b) filed the following complaint with the CCRB over the phone.

On February 23, 2020, at approximately 3:50 p.m., § 87(2)(b) and § 87(2)(b) were driving down Courtlandt Avenue towards 159th Street in the Bronx. They were pulled over by PO John Migliaccio and PO Matthew Miret, both of PSA 7. Sergeant Steven Counihan, PO Mike Suarez, and PO Nicholas Rios, all of PSA 7 assisted.

PO Migliaccio told § 87(2)(b) and § 87(2)(b) that they smelled marijuana coming from their vehicle and asked them to step out of the vehicle. PO Migliaccio frisked § 87(2)(b) on his arms, waist, and legs (**Allegation A: Abuse of Authority: Frisk:** § 87(2)(g)). PO Miret frisked § 87(2)(b) on his chest and shoulders and continued down his body (**Allegation B: Abuse of Authority: Frisk:** § 87(2)(g)). PO Miret took a pocketknife out of § 87(2)(b)'s pocket (**Allegation C: Abuse of Authority: Search of person:** § 87(2)(g)). PO Suarez lifted § 87(2)(b)'s arms up into the air while he was in handcuffs (**Allegation D: Force: Unspecified force:** § 87(2)(g)). PO Miret allegedly threw § 87(2)(b) against the hood of the police vehicle (**Allegation E: Force: Pushed/shoved/threw:** § 87(2)(g)). PO Suarez allegedly threw § 87(2)(b) onto the ground and kicked him in his thigh (**Allegation F: Force: forcible takedown:** § 87(2)(g), **Allegation G: Force: Kick:** § 87(2)(g)). PO Migliaccio, PO Miret, and Sergeant Counihan searched § 87(2)(b)'s car at the incident location (**Allegation H-J: Abuse of Authority: Vehicle search:** § 87(2)(g)). PO Migliaccio asked § 87(2)(b) if he was concealing anything in his “nuts or ass” (**Allegation K: Discourtesy (Word):** § 87(2)(g)). They were brought back to the stationhouse and lodged in a cell.

While they were in cells at approximately 4:15 p.m., PO Migliaccio asked § 87(2)(b) again if he was concealing anything in his “nuts or ass” (**Allegation L: Discourtesy (Word):** § 87(2)(g)). PO Suarez asked § 87(2)(b) to lower his pants to see if he was concealing anything on his person, and PO Miret asked § 87(2)(b) to do the same (**Allegations M-N: Abuse of Authority: Strip search:** § 87(2)(g)). They were released with summonses at approximately 11:00 p.m. § 87(2)(b) and § 87(2)(b) remained in the waiting area of the stationhouse for § 87(2)(b)'s mother, § 87(2)(b) to arrive. § 87(2)(b) arrived at the stationhouse with § 87(2)(b)'s sister, § 87(2)(b). § 87(2)(b) asked for all the officers' names and business cards. Allegedly, none of the officers provided § 87(2)(b) with their names or business cards (**Allegations O - S: Abuse of Authority: Refusal to provide name:** § 87(2)(g), **Allegations T – X: Abuse of Authority: Refusal to provide business card:** § 87(2)(g)).

§ 87(2)(b) received a summons # § 87(2)(b) for § 87(2)(b). § 87(2)(b) received a summons # § 87(2)(b) for § 87(2)(b) (**Board Reviews 30-31**).

§ 87(2)(b) provided a cell phone video to the CCRB (**Board Reviews 08-09**). He also provided photographs of his jacket and a scratch to his hand from this incident (**Board Review 32**). Body-worn camera footage was obtained for PO Migliaccio, PO Miret, PO Suarez, and Sergeant Counihan (**Board Reviews 10-16**). Stationhouse was obtained for PSA 7; however, it did not capture the above-mentioned allegations § 87(2)(g) (**Board Review 15**).

Findings and Recommendations

Allegation A—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer John Migliaccio frisked § 87(2)(b)

Allegation B—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret frisked § 87(2)(b)

Allegation C—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret searched § 87(2)(b)

Allegation H—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer John Migliaccio searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation I—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Sergeant Steven Counihan searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

Allegation J—Abuse of Authority: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(b) provided a brief phone statement on March 6, 2020 (**Board Review 33**) and was interviewed over the phone on March 25, 2020 (**Board Review 01**). § 87(2)(b) provided a brief phone statement on March 10, 2020 (**Board Review 34**) and was interviewed over the phone on March 27, 2020 (**Board Review 02**). § 87(2)(b) provided a brief phone statement on March 27, 2020 (**Board Review 35**). § 87(2)(b) was interviewed over the phone on April 13, 2020 (**Board Review 03**). Sergeant Counihan was interviewed over MS Teams on November 9, 2020 (**Board Review 04**). PO Miret was interviewed over MS Teams on December 21, 2020 (**Board Review 05**). PO Suarez was interviewed over MS Teams on December 21, 2020 (**Board Review 06**). PO Migliaccio was interviewed over MS Teams on February 3, 2021 (**Board Review 07**).

§ 87(2)(b) stated that PO Migliaccio told them that he smelled marijuana coming from their vehicle. § 87(2)(b) told PO Migliaccio that he had half of a Black and Mild cigar in his pocket and that was what he was smelling, not marijuana. § 87(2)(b) and § 87(2)(b) had not used drugs or alcohol that day. Neither of them used drugs or drank alcohol inside of the car that day. PO Migliaccio asked § 87(2)(b) and § 87(2)(b) to step out of the car and put their hands-on top of the car and they both complied. PO Migliaccio patted down § 87(2)(b). § 87(2)(b) was wearing a hooded coat, Adidas track pants, and sneakers. § 87(2)(b) had half of a cigar in his coat pocket and a pocketknife in his right coat pocket. The pocketknife folded out and was less than four inches long. He used it for work. § 87(2)(b) had headphones, money, tissues in his coat pockets as well but did not remember where exactly they were. PO Miret started to pat-down the top of his body on his chest and shoulders and went down his body. PO Miret pat-down his waist area and in between his legs with an open-palm. § 87(2)(b), § 87(2)(a)

§ 87(2)(b) told PO Miret that he had a pocket-knife and PO Miret asked him to take it out of his pocket. PO Miret took the pocket-knife from § 87(2)(b). PO Miret began “chopping between his legs” with an open palm with his thumb up, and continuously hit the inside of § 87(2)(b)’s legs with his hand. PO Miret was chopping § 87(2)(b)’s testicles as well. § 87(2)(b) jumped again. The officers searched inside of § 87(2)(b)’s car at the incident location and at the precinct stationhouse. § 87(2)(b) did not see them search the car at the incident location.

§ 87(2)(b)’s statement was generally consistent with that of § 87(2)(b).

PO Migliaccio told § 87(2)(b) that the vehicle smelled of marijuana. The marijuana smelled fresh as though they had smoked right before getting into the car or while they were in the car. PO Migliaccio did not know if they confirmed or denied smoking marijuana in the car. He did not remember if they mentioned to him that it was a Black and Mild that he smelled, but he thought that a Black and Mild cigar or cigarette had a distinctly different smell than marijuana. There was no situation where PO Migliaccio would confuse those two smells. He did not remember if he saw marijuana in plain sight in the vehicle. PO Migliaccio asked § 87(2)(b) and § 87(2)(b) to step out of the vehicle, and they complied. He still smelled marijuana on § 87(2)(b)'s person after he stepped out of the car. PO Migliaccio frisked § 87(2)(b)'s waistband and pockets for weapons and contraband because of the smell of marijuana. He did not remember if there were any other reasons for frisking him apart from the marijuana exception. He did not remember if he went into any of § 87(2)(b)'s pockets. He did not remember if he recovered anything, including marijuana, on his person. He thought that § 87(2)(b) was also frisked by other officers. § 87(2)(b) was uncooperative and acting irate, being loud, and trying to pull away from the officers. He did not remember if § 87(2)(b) was moving his arms and legs. The officers, PO Migliaccio was not sure who, searched the vehicle. He did not remember where in the car was searched or if anything was recovered from the car.

PO Miret removed § 87(2)(b) and § 87(2)(b) from the vehicle because of the strong odor of marijuana. PO Miret did not notice any visible marijuana in the car, he did not recall if the occupants said anything about marijuana, nor did he recall asking the occupants about marijuana. PO Miret removed § 87(2)(b) from the vehicle, asked him if he had anything dangerous on him, and he told PO Miret that he had a knife in his pocket. PO Miret did not recall which pocket. PO Miret pat the area down where § 87(2)(b) said the knife was and removed the knife from his pocket. He did not recall what the knife looked like. PO Miret pat down § 87(2)(b) but did not remember where he pat him down. Normally, PO Miret pats-down the outer layer of clothing on an individual on their arms, shoulders, chest, underarms, waistband, legs, groin, shoes, and feet area. PO Miret did not remember if the civilian's vehicle was searched on scene or elsewhere. He did not recall if the vehicle was searched on scene or at the stationhouse at all. He did not remember if he searched the vehicle. No marijuana was recovered from the individuals or from the vehicle while the officers were on scene.

Sergeant Counihan and PO Suarez's statements were generally consistent with that of the other officers.

PO Migliaccio's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 10, 12**). At 00:27, PO Migliaccio is seen patting in between § 87(2)(b)'s legs and up his body. At 02:04, He walks over to the passenger door of the vehicle and searches the passenger seat and underneath the seat. PO Miret is seen on the other side of the vehicle searching the driver's side. PO Migliaccio closes the door of the vehicle and searches the backseats. He closes the door of the vehicle.

PO Miret's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 14, 16**). At 00:31, PO Miret opens the passenger door of the vehicle and tells § 87(2)(b) to step out of the vehicle. He tells him to put his hands on top of the car and he begins to pat him down. At 00:40, PO Miret asks him if he has anything on him and § 87(2)(b) says that he has a pocket-knife. PO Miret takes the pocketknife out of § 87(2)(b)'s coat pocket. At 01:13, PO Miret asks § 87(2)(b) to spread his legs. § 87(2)(b) says, "Yo," and PO Miret tells him to put his hands on the roof. § 87(2)(b) PO Miret places him into handcuffs. There is a struggle with PO Miret and § 87(2)(b) PO Miret walks to the front driver's seat of the vehicle and looks inside of § 87(2)(b)'s wallet. He

looks in the center console of the car while PO Migliaccio looks in the glove compartment of the car. They search the front seats of the car. PO Miret opens the back door of the car and searches the back seats. PO Migliaccio also searches the back seats of the car. At 04:12, PO Miret gets the keys from the ignition and opens the trunk. He searches the trunk of the car.

Sergeant Counihan's body-worn camera footage captured this portion of the incident in its entirety (**Board Reviews 10, 11**). At 04:10, Sergeant Counihan tells PO Migliaccio to watch § 87(2)(b). He goes and looks inside the passenger seat of the vehicle. He searches underneath the seat and inside of the glove compartment. He goes inside of the back-passenger seats of the car and searches there as well. He opens the compartment that leads to the back trunk and puts his hand inside.

It was undisputed that PO Migliaccio pat down § 87(2)(b) and PO Miret pat down and searched § 87(2)(b). It was also undisputed that PO Migliaccio, PO Miret, and Sergeant Counihan searched § 87(2)(b)'s vehicle.

People v. Chestnut, 43 A.D.2d 260 found that the smell of marijuana smoke, with nothing more, can be sufficient to provide police officers with probable cause to search an automobile and its occupants (**Board Review 17**).

§ 87(2)(g)

Allegation (D)—Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b).

Allegation (E)—Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Matthew Miret used physical force against § 87(2)(b).

Allegation (F)—Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b).

Allegation (G)—Force: In the vicinity of East 159th Street and Courtlandt Avenue in the Bronx, Police Officer Mike Suarez used physical force against § 87(2)(b).

§ 87(2)(b) stated that he was placed into handcuffs by PO Miret. PO Suarez put § 87(2)(b)'s hoodie over his head and forcefully pushed § 87(2)(b)'s head onto the hood of the police vehicle. § 87(2)(b)'s forehead made contact with the police vehicle. Four more officers approached § 87(2)(b). § 87(2)(b) could not see because his hood was over his head. Two officers grabbed § 87(2)(b) on his elbow and forearm and two officers grabbed § 87(2)(b) on his legs. The officers threw § 87(2)(b) into the air, his feet left the ground, and he fell to the ground. § 87(2)(b) landed on his hip and thigh on the ground. § 87(2)(b) felt one kick to the back of his left thigh. The officers brought § 87(2)(b) back to his feet. The officers put § 87(2)(b)'s head against the hood of the police vehicle and bent his shoulders and arms upwards towards his head for approximately ten to fifteen seconds. They pushed his wrists upwards towards his head.

§ 87(2)(b) stated that possibly PO Suarez put § 87(2)(b)'s hood over his head. PO Suarez slammed § 87(2)(b)'s head against § 87(2)(b)'s vehicle. PO Rios, PO Miret, and PO Suarez picked up § 87(2)(b) by his arms, brought him towards the police vehicle with his feet not on the ground, PO Suarez slammed his head on the police vehicle, and all of the officers brought him to the ground. They slammed him on the ground and § 87(2)(b) landed on his stomach. § 87(2)(b) was not doing anything with his body while they were using force against him.

§ 87(2)(b) stated that she watched this interaction from inside of her apartment across the street. She saw officers bring § 87(2)(b) to the ground.

PO Suarez stated that when he saw that PO Miret was trying to give § 87(2)(b) instructions, he left the driver's side of the car to the passenger side to assist PO Miret. PO Suarez helped to restrain § 87(2)(b). He held onto § 87(2)(b) because § 87(2)(b) was moving around a lot, not listening to PO Miret, and attempting to push off PO Miret. When PO Suarez put his hands on § 87(2)(b), § 87(2)(b) attempted to push off PO Suarez. PO Suarez did not remember how he restrained § 87(2)(b) but knew that he put his hands on him to try to keep him still. He did not remember where on § 87(2)(b)'s body that he put his hands. The officers placed § 87(2)(b) into handcuffs. PO Suarez did not remember lifting § 87(2)(b)'s hands above his head and pressing him into § 87(2)(b)'s vehicle. He did not remember if there was any reason why he would need to do that. This was not a tactic that PO Suarez had used prior to this incident. PO Suarez and PO Miret brought § 87(2)(b) to the police vehicle. When the officers walked § 87(2)(b) away from § 87(2)(b)'s car, § 87(2)(b) continued to attempt to push off the officers. The officers continued to hold onto § 87(2)(b). § 87(2)(b)'s left foot and PO Suarez's right foot intertwined and § 87(2)(b) fell forward onto the ground onto his chest. § 87(2)(b) fell fully onto the ground. PO Suarez fell as well, however, he caught his fall. PO Suarez did not completely fall to the ground. PO Suarez did not recall pushing § 87(2)(b) against the hood of the police vehicle. He did not recall seeing other officers do this to § 87(2)(b). PO Suarez did not remember if § 87(2)(b) attempted to strike any of the officers at any point. PO Suarez did not strike § 87(2)(b) nor did he observe other officers strike § 87(2)(b).

PO Miret placed § 87(2)(b) into handcuffs. He did not recall PO Suarez pushing § 87(2)(b)'s arms above his head. PO Miret thought that police officers used several tactics to restrain individuals. He did not know if he used this tactic before or remembered seeing another officer use this tactic before. He did not remember if he received any training about the use of this tactic to gain compliance. PO Miret went to guide § 87(2)(b) to the police vehicle and § 87(2)(b) continued to move around. § 87(2)(b) fell onto the ground. PO Miret did not know how § 87(2)(b) fell to the ground but he did not forcibly take § 87(2)(b) to the ground nor did other officers forcibly take § 87(2)(b) to the ground. While falling, he brought PO Suarez to the ground with him. PO Miret did not remember how PO Suarez was making physical contact § 87(2)(b) as they fell to the ground. PO Miret picked § 87(2)(b) up and placed him into the police vehicle. PO Miret did not remember throwing anyone onto the hood of the police vehicle. He did not recall seeing other officers do this during this incident.

Sergeant Counihan and PO Migliaccio's statements were generally consistent with that of PO Suarez and PO Miret.

Sergeant Counihan's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 10, 11**). At 01:32, an officer handcuffs § 87(2)(b). At 02:00, PO Suarez is lifting § 87(2)(b)'s handcuffed arms about his head and saying, "It doesn't work like that, ya heard?" He continues to push his arms upwards.

PO Migliaccio's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 10, 12**). At 01:25, PO Suarez is seen bending § 87(2)(b)'s arms above his head and saying, "It doesn't work like that you heard?" PO Migliaccio goes to the driver's door of the vehicle and walks back towards § 87(2)(b). At 01:43, § 87(2)(b) is pushed against the hood of the police vehicle by PO Miret and a slam sound is heard. At 01:48, § 87(2)(b) is on the ground and it is unclear how he got to the ground. Someone tells him to stand up. PO Migliaccio helps

bring § 87(2)(b) to his feet.

According to Patrol Guide Procedure 221-01 (**Board Review 18**), when appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In determining whether the use of force is reasonable, members of service should consider the following: The nature and severity of the crime or circumstances, Actions taken by the subject, The duration of the action, The immediacy of the perceived threat or harm to the subject, members of service, and/or bystanders, Whether the subject is actively resisting custody, Whether the subject is attempting to evade arrest by flight, Number of subjects in comparison to the number of MOS, Size, age, and condition of the subject in comparison to the MOS, Subject's violent history, if known, Presence of a hostile crowd or agitators, Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

§ 87(2)(g)

§ 87(2)(g)

Allegation (K)—Discourtesy: In the vicinity of East 159th Street and Courtlandt Avenue and the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio spoke discourteously to

§ 87(2)(b)

Allegation (L)—Discourtesy: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio spoke discourteously to § 87(2)(b)

Neither § 87(2)(b) nor § 87(2)(b) mentioned to the investigation that PO Migliaccio asked § 87(2)(b) if he was “concealing weed in his nuts or his ass.”

At the incident location, PO Migliaccio asked § 87(2)(b) if he was concealing anything, “In his nuts or his ass.” He thought that he used these terms because the incident happened quickly, and he could not think to use the correct anatomical terms. In the cell area of the stationhouse, PO Migliaccio thought that he may have said to § 87(2)(b) “This is amnesty hour, do you have weed in your nuts or your ass?” He provided the same reasons as before as to why he said and used this language.

PO Migliaccio's body-worn camera footage captures this portion of the incident in its entirety (**Board Review 10, 12**). At 09:50, PO Migliaccio says, “Bro, do you have something in your nuts or something?” He tells § 87(2)(b) to step in the vehicle and § 87(2)(b) says that he does not have anything on him. At 10:23, one of the officers says that he thinks they have marijuana on

them. PO Migliaccio says that when he searched § 87(2)(b) that he was tensing up a little bit. § 87(2)(b) and § 87(2)(b) are brought back to the stationhouse and are placed into holding cells. PO Migliaccio tells § 87(2)(b) that they are going to take the handcuffs off and that he is going to be searched again. At 22:19, PO Migliaccio says, “This is amnesty hour, do you have weed in your nuts or your ass?” § 87(2)(b) says no. PO Migliaccio searches § 87(2)(b) inside of the cell. At 25:20, PO Migliaccio says, “You have nothing in your ass?”

According to Patrol Guide Procedure 200-02 (**Board Review 19**), officers must value human life, respect the dignity of each individual, and render their services with courtesy and civility. Officers must maintain a higher standard of integrity than is generally expected of others because so much is expected of them.

§ 87(2)(g)

Allegation (M)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez strip-searched § 87(2)(b)

Allegation (N)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret strip-searched § 87(2)(b)

Neither § 87(2)(b) nor § 87(2)(b) mentioned that they were strip-searched at the PSA 7 stationhouse. They did not mention that they were asked to pull down their pants in the cell area of the stationhouse.

PO Suarez did not think that § 87(2)(b) was strip-searched. PO Suarez thought that § 87(2)(b) and was concealing contraband on his person that was not recovered on scene. He believed this because of the strong odor of marijuana coming from his person. PO Suarez did not know if § 87(2)(b) was asked to pull down their pants to see if they were concealing anything on his person. He did not remember if he or any other officers asked § 87(2)(b) to pull down his pants. He did not remember seeing § 87(2)(b) pull down his pants in the cell area of the stationhouse. If PO Suarez needed to conduct a strip search, he would need to ask his supervisor for permission to conduct a strip search. He would need to believe that the person was concealing contraband in their underwear or privately. He did not know if a supervisor noted a strip search in the command log or noted anything about asking § 87(2)(b) to pull down his pants.

PO Miret asked § 87(2)(b) to pull down his pants to see if he was concealing anything on his person that he did not recover at the location. He still smelled marijuana in the cell area. There was nothing apart from the strong odor of marijuana that informed PO Miret’s decision to ask § 87(2)(b) to pull down his pants in the cell area. He did not remember asking permission from a supervisor before asking § 87(2)(b) to lower his pants. § 87(2)(b) was not concealing anything in his pants that PO Miret observed. PO Miret did not remember how far § 87(2)(b) pulled his pants down but thought it was just to see the pocket of the underwear. PO Miret did not ask § 87(2)(b) to pull down his pants nor did he hear any other officers ask § 87(2)(b) to pull down his pants. He did not know who was dealing with § 87(2)(b) in the cell area. He did not recall if there were any other officers present in the cell area while this was happening. He did not remember seeing a sergeant or supervisor noting in the command log that he asked § 87(2)(b) to lower his pants.

Sergeant Counihan did not remember if he authorized the officers to conduct a strip-search but said that it was possible that one was done. He did not remember if § 87(2)(b) and § 87(2)(b) were doing anything with their bodies that would lead him to believe that they were concealing further

contraband. He did not remember if the officers told him about a strip-search that was conducted in the cell area.

PO Migliaccio's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 10, 12**). At 14:00, § 87(2)(b) says that he has a half of a Black and Mild in his back pocket. They all walk into the stationhouse. PO Migliaccio says that they know what weed smells like and what a Black and Mild smells like. PO Migliaccio fills out paperwork. § 87(2)(b) is placed into a holding cell. PO Migliaccio tells § 87(2)(b) that they are going to take the handcuffs off and that he is going to be searched again. At 22:19, PO Migliaccio says, "This is amnesty hour, do you have weed in your nuts or your ass?" § 87(2)(b) says no. PO Migliaccio searches § 87(2)(b) inside of the cell. He goes into his back pockets. He pats down § 87(2)(b)'s legs. At 25:20, PO Migliaccio says, "You have nothing in your ass?" PO Suarez tells § 87(2)(b) "I don't want to strip search you so can you pull down your pants a little bit for me?" § 87(2)(b) pulls down his pants and pulls his pants up again.

The second part of PO Suarez's body-worn camera footage captured this portion of the incident in its entirety (**Board Review 10, 13**). § 87(2)(b) and § 87(2)(b) are walked into the stationhouse. At 00:34, § 87(2)(b) says that he has half of a Black and Mild in his pocket. PO Suarez picks up his BWC from the desk at 08:08 and § 87(2)(b) is brought to a cell in the back. PO Migliaccio explains to § 87(2)(b) that he is going to be searched again. At 08:48, PO Migliaccio says, "This is amnesty hour right now, it smells like weed. Do you have weed in your nuts or in your ass." At 08:56, § 87(2)(b) says, "Strip-search me bro, I work for § 87(2)(b)." PO Suarez puts his BWC on a table facing the cell area. He stands outside of the cell as PO Migliaccio searches § 87(2)(b). At 11:50, PO Migliaccio asks § 87(2)(b) if he has anything in his ass. At 12:00, PO Suarez says, "You gave me permission to strip search you, I do not want to strip search you. Can you drop down your pants a little bit?" At 12:20, § 87(2)(b) pulls down his pants and then pulls up his pants.

The second portion of PO Suarez's body-worn camera was played during his interview beginning at 08:48 in the video. The audio was muffled and could not be heard during the interview. The video was played again from 12:00 to show the actions in the video. PO Suarez noticed that § 87(2)(b) was wearing compression shorts. Compression shorts are very tight clothing that is normally used to absorb sweat. In the past, PO Suarez dealt with other individuals who wore compression shorts. He knew that there was a pocket inside of the front-middle of the compression shorts. The pocket was accessible from the outside of the compression shorts. He asked § 87(2)(b) to show him the inside pocket of the compression shorts. He believed that § 87(2)(b) was concealing something inside the pocket of the compression shorts because of the strong odor of marijuana. He has found contraband concealed in the pocket of compression shorts hundreds of times. He believed that the pocket was mostly used to conceal small contraband. If he had not recovered contraband himself, he witnessed other officers recover contraband from the pockets of compression shorts. An officer would not be able to feel the pocket in compression shorts in an initial pat-down of an individual because of the location of the pocket. PO Suarez did not need a supervisor's permission to ask someone to drop down their pants a little bit. PO Suarez would not consider compression shorts underwear because he has seen people wear underwear underneath compression shorts. PO Suarez did not see any of § 87(2)(b)'s skin.

PO Suarez did not know if § 87(2)(b) was asked to drop down his pants a little bit nor did he ask § 87(2)(b) to drop down his pants a little bit.

The investigation obtained the second platoon Command Log from PSA 7 for the day of this incident (**Board Review 22**). Nowhere in the Command Log does it note that any officers conducted a strip search of § 87(2)(b) and § 87(2)(b)

It was undisputed that PO Suarez asked § 87(2)(b) and that PO Miret asked § 87(2)(b) to pull down their pants so that they could see whether they were concealing any contraband further on their persons. It was also undisputed that a supervisor was not notified, and a command log entry was not prepared for asking both § 87(2)(b) and § 87(2)(b) to pull down their pants.

According to Patrol Guide Procedure 208-05 (**Board Review 20**), a strip search is any search in which an individual's undergarments (e.g. bra, underwear, etc.), and/or private areas are exposed or in which an individual's clothing is removed, lifted up or pulled down, to expose undergarments or private areas. A strip-search may only be conducted when the arresting officer reasonably suspects that weapons, contraband, or evidence may be concealed upon the person or in the clothing is such a manner that they may not be discovered by the previous search methods. The arresting officer requesting authorization to conduct a strip-search must describe the factual basis for the request to the officer's immediate supervisor. A supervisor will authorize a strip-search only when an arresting officer has articulated a reasonable suspicion that the individual is concealing evidence, contraband, or a weapon. The supervisor authorizing the strip-search is responsible for ensuring the search is conducted properly. It should not be necessary to touch the subject's body, except for the examination of the hair.

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Allegation (O)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez refused to provide his name to § 87(2)(b)

Allegation (P)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio refused to provide his name to § 87(2)(b)

Allegation (Q)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Nicholas Rios refused to provide his name to § 87(2)(b)

Allegation (R)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Sergeant Steven Counihan refused to provide his name to § 87(2)(b)

Allegation (S)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret refused to provide his name to § 87(2)(b)

Allegation (T)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Mike Suarez failed to provide § 87(2)(b) with a business card.

Allegation (U)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer John Migliaccio failed to provide § 87(2)(b) with a business card.

Allegation (V)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Nicholas Rios failed to provide § 87(2)(b) with a business card.

Allegation (W)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Sergeant Steven Counihan failed to provide § 87(2)(b) with a business card.

Allegation (X)—Abuse of Authority: In the vicinity of the PSA 7 stationhouse in the Bronx, Police Officer Matthew Miret failed to provide § 87(2)(b) with a business card.

§ 87(2)(b) went to the stationhouse with § 87(2)(b)'s sister, § 87(2)(b) and sat with § 87(2)(b) and § 87(2)(b). They sat in the stationhouse for a few hours right near the gate that stops civilians from moving further into the stationhouse. They had to wait in a waiting area and could not go past a gate and a guard to the back of the stationhouse. § 87(2)(b) was present for the entire interaction at the stationhouse but did not interact with any of the officers. § 87(2)(b) told § 87(2)(b) and § 87(2)(b) to be quiet so that she could handle the situation. An officer, possibly Sergeant Counihan, came into the stationhouse and § 87(2)(b) pointed him out to § 87(2)(b) as one of the officers that he interacted with. § 87(2)(b) called him over and asked him for his business card and he said that he was going to go to the back and come back out with one. Before he came back out, the other officers walked into the stationhouse one by one from a back entrance. § 87(2)(b) identified them all as officers that he interacted with. § 87(2)(b) asked every officer for their business cards because they had arrested § 87(2)(b) earlier that day. She told them that they arrested her son for no reason and that she wanted a business card from all of them. There was a total of four officers. All of the officers told § 87(2)(b) that they did not need to provide their business cards because § 87(2)(b) and § 87(2)(b) were both issued summonses. § 87(2)(b) asked the officers for their names since she could not get their business cards. As the officers walked away from § 87(2)(b) they yelled out their names to her. They exited through another exit door opposite from where they were standing. She did not have enough time to write their names down because they were on the other side of the stationhouse and exiting through a back door.

§ 87(2)(b) and § 87(2)(b)'s statement were generally consistent with that of § 87(2)(b)

PO Migliaccio did not remember § 87(2)(b) or § 87(2)(b)'s family members coming to the stationhouse and asking all the officers for their names and business cards. PO Migliaccio did not remember if he provided his name to anyone at the stationhouse but did issue the summonses which said all his information on them. If someone asked for his name, then he would provide it to them. He was not sure if he had to provide someone with his name if he issued them a summons but thought that he would provide them if asked. He was not sure if any of the officers provided § 87(2)(b)

§ 87(2)(b) or § 87(2)(b) with business cards. PO Migliaccio was not sure if business cards were required to be provided to them. He thought that if they asked then he would provide his business card. He did not know if he had to provide a business card during a car stop. He did not remember if he gave anyone a business card.

PO Suarez recalled that § 87(2)(b) and § 87(2)(b)'s family members came to the stationhouse and asked PO Suarez for his name. PO Suarez provided their family members with his name. He did not know who asked him for his name but remembered that it was a female. PO Suarez must provide his name and shield number when asked. PO Suarez did not hear the female ask any of the other officers for their names. He did not remember hearing other officers provide their names or shield numbers to the female. He did not hear the other officers refuse to provide their names or shield numbers to the female. If someone is arrested or issued a summons, then officers did not need to provide a business card. No one asked PO Suarez for a business card. PO Suarez did not need to provide § 87(2)(b) or § 87(2)(b) with a business card. PO Suarez did not provide any civilians with business cards during this incident.

PO Miret and Sergeant Counihan's statements were generally consistent with that of PO Migliaccio.

No BWC footage received captured this interaction concerning names and business cards at the stationhouse (**Board Reviews 10-16**). Stationhouse footage was received but it did not capture these allegations (**Board Review 21**).

§ 87(2)(g)
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first complaint for which § 87(2)(b) and § 87(2)(b) have been parties (**Board Reviews 23-25**).
- PO Migliaccio has been a member of service for five years and this is the fifth case and twenty-first allegation for which he has been a subject. § 87(2)(g)
[REDACTED]
- PO Miret has been a member of service for four years and this is the third case and sixteenth allegation for which he has been a subject. § 87(2)(g)
[REDACTED]
- Sergeant Counihan has been a member of service for eight years and this is the sixth case and twentieth allegation for which he has been a subject. § 87(2)(g)
[REDACTED]
- PO Suarez has been a member of service for four years and this is the fourth complaint and eleventh allegation for which he has been a subject. § 87(2)(g)
[REDACTED]
 - CCRB Case No. 201806609 involved allegations of force (physical force and pepper spray) that were exonerated and discourtesy (word) that was substantiated. He did not receive discipline for this substantiated allegation.
- PO Rios has been a member of service for nine years and this is the fortieth allegation for which he has been a subject. § 87(2)(g)
[REDACTED]

- CCRB Case No. 201507072 involved allegations of abuse of authority (search of person and threat of force) that were unsubstantiated, and abuse of authority (frisk) that was substantiated. He received formalized training.
- CCRB Case No. 201608992 involved allegations of abuse of authority (frisk, other, and refusal to provide name/shield) that were all substantiated. He received command discipline A.
- CCRB Case No. 201706642 involved allegations of force (other), abuse of authority (search of person) that were unsubstantiated, and force (physical force) that were substantiated. He received charges and was required to forfeit ten vacation days.
- PO Migliaccio, PO Suarez, and PO Miret's employment histories have been requested from DAO and will be added to the case file upon receipt.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- A request for a Notice of Claim was obtained for § 87(2)(b). In it § 87(2)(b) claims that he was pushed, punched, slammed on top of a car, unlawfully arrested, and is seeking \$1,000,000 in redress. (**Board Review 26**). There is no 50H hearing scheduled.

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 10

Investigator:	<u>Jackie Manginelli</u>	<u>Inv. Jackie Manginelli</u>	<u>06/22/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Eric Rigie</u>	<u>IM Eric Rigie</u>	<u>6/22/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date